**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**Writ Petition No. 4961 (M/S) of 2001**
**(Old No. 13351/1998)**

1. Hem Singh S/o Lal Singh.
2. Smt. Kamla W/o Hem Singh.
   Both residents of Village Rajgaon,
   Patti Jua Udaipur, Tehri Garhwal. ..... Petitioners

**Vs**

1. Additional Commissioner (Administration) Garhwal Division Nainital.
2. Assistant Collector Ist Class, Tehri Pratap Nagar, Tehri.
3. U.P. State through Collector Tehri Garhwal.
4. Gram Sabha Serain Jua, Udaipur, District- Tehri through Pradhan.
5. Pooran Singh S/o Sher Singh R/o Village Dauglada, Laga Godi Serain Jua Udaipur, Tehri Garhwal.
6. Bachan Singh S/o Amar Singh.
7. Govind Singh.
8. Bhagwan Singh.
9. Gopal Singh

   Respondents No.7 to 8 are S/o of Jabar Singh
   All resident of Village Serani Patti, Jua Udaipur,
   District- Tehri Garhwal. .....Respondents

Sri Ramji Srivastava learned counsel for the petitioners.
Sri R.C. Arya learned Standing counsel for the respondents No. 1 to 3.
Sri Rajendra Dobhal learned counsel for the respondent No. 5.

**Dated: -19th September 2006**

**Hon'ble B.S. Verma, J.**

Heard Sri Ramji Srivastava learned counsel for the petitioners and Sri R.C. Arya learned Standing counsel for the respondent Nos. 1 to 3 and Sri Rajendra Dobhal learned counsel for the respondent No.5.

2. By the present writ petition the petitioner has prayed for writ of certiorari quashing the impugned order dated 24-8-1992 passed by respondent No.2 Assistant Collector Ist Class Tehri, Pratap Nagar, Tehri as well as order dated 6-12-1997 passed by respondent No.1 Additional Commissioner (Administration) Garhwal Division, Garhwal respectively.

3. Brief facts of the case are that a suit was filed for partition of the land in dispute. The Assistant Collector respondent No. 2 on 1.3.1988 ordered that Khata No. 70 and 106 which has already been gifted by original tenure holder Ratan Singh be partioned according to their shares.

4. Aggrieved by the aforesaid order of the Assistant Collector the respondent No.5 Pooran Singh preferred an appeal before the Additional Commissioner, Pauri Garhwal. The appeal was partly allowed by the Additional Commissioner, Pauri Garhwal vide order dated 18-1-1990 and the appeal regarding Khata No.62 was rejected and it was ordered that the land of Khata No.70 and 106 be partioned in accordance with Rules 131 and 132 of the U.P.Z.A. and L.R. Act 1952(***hereinafter referred to as Act, 1952)***. Against this order neither the petitioner nor the respondents have preferred any second appeal.

5. Thereafter, the learned Assistant Collector proceed with the matter as per the directions of the Additional Commissioner for partion of the land in dispute and Naib Tehsildar was directed to prepare the lots as per Rules 131 and 132 of the Act, 1952.

6. After hearing both the parties and after considering the objection against the lots, the lots were confirmed and the final decree was ordered to be prepared accordingly vide order dated 24-8-1992. Aggrieved by the said order dated 24-8-1992 passed by the Assistant Collector which is Annexure-6 to the writ petition, the petitioners preferred a revision No. 23/1992-1993 Hem Singh Vs. Pooran Singh, before the Commissioner which was too dismissed on 6.12.1997 and it was held that the lots be prepared by excluding the land which has already been gifted by the original tenure holder.

7. Earlier the lots were prepared by Lekpal and after hearing the objection on the lots, the lots were cancelled. However, Naib Tehsildar was directed to prepare the fresh lots as per Rules 131 and 132 of the Act No.1 of 1952. The learned Commissioner gave a categorical finding that the petitioners have failed to prove that the lots were prepared against to the Rules 131 and 132 of the Act, 1952.

8. The learned counsel for the petitioners vehemently submitted before me that they have filed objection before the Assistant Collector and the land, which was gifted to them has been included in the lots. The only grievance of the petitioners is that the land be excluded and no other grounds has been pressed by the petitioners.

9. On a perusal of the finding of the courts below, the land which was gifted, has not been included in the lots and the Khata No.62 has already been excluded by the appellate Court, the impugned orders do not suffer any infirmity or illegality.

10. Hence, the writ petition is devoid of merit and is hereby dismissed accordingly.

11. The assistant Collector concerned is directed to proceed with the matter in accordance with law.

**(B.S. Verma,J)**

**Dated:- 19th September 2006**

M.K.